

US DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FILED

JUL 12 2018

DOUGLAS F. YOUNG, Clerk  
By  
Deputy Clerk

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HOT SPRINGS DIVISION

EVERT MASON,

Plaintiff,

v.

CIVIL ACTION NO.

18-6063

CAPITAL ONE BANK (USA), N.A.,

Defendant.

**PLAINTIFF'S COMPLAINT**

NOW COMES Plaintiff, EVERT MASON ("Plaintiff"), by and through his attorneys, and hereby alleges the following against Defendant, CAPITAL ONE BANK (USA), N.A. ("Defendant"):

**INTRODUCTION**

1. This action is brought pursuant to the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction of this action pursuant to 47 U.S.C. § 227(b)(3) and 28 U.S.C. § 1331.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) as the acts and transactions giving rise to this action occurred in this district as Plaintiff resides in this district and Defendant transactions business in this district.

**PARTIES**

4. Plaintiff is a natural person who at time relevant resided in Hot Springs, Arkansas.
5. Defendant is a business entity with headquarters located in Virginia.
6. Defendant acted through its agents, employees, officers, members, directors, heirs,

successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

### **FACTUAL ALLEGATIONS**

7. Plaintiff has a Cabela's Club credit card which is issued and/or serviced by Defendant.

8. Defendant started calling Plaintiff at telephone number (501) 282-79xx.

9. Telephone number (501) 282-79xx is assigned to Plaintiff's cellular telephone.

10. The purpose of Defendant's calls was related to the credit card.

11. These calls were for a non-emergency purpose.

12. Upon information and good faith belief, based on the frequency, number, nature and character of these calls, Defendant placed them by using an automatic telephone dialing system.

13. On or about April 2, 2018, Plaintiff spoke with Defendant.

14. During this conversation, Plaintiff informed Defendant that he could not make a payment, that Defendant was calling his cell phone while he was at work, and that he could not take Defendant's phone calls while he was at work.

15. In addition, Plaintiff explicitly instructed Defendant to stop calling his cell phone.

16. Defendant continued to use an automatic telephone dialing system to call Plaintiff's cell phone after April 2, 2018.

17. Between April 2, 2018 and April 16, 2018, Defendant used an automatic telephone dialing system to call Plaintiff's cellular telephone at least forty-five (45) times.

18. Defendant called Plaintiff's cell phone multiple times per day.

19. Defendant called Plaintiff's cell phone up to eight (8) times in a single day.

20. Defendant willfully and voluntarily used an automatic telephone dialing system to call Plaintiff's cell phone.

21. Defendant intended to use an automatic telephone dialing system to call Plaintiff's cell phone.

22. Defendant did not have Plaintiff's express consent to use an automatic telephone dialing system to call Plaintiff's cell phone.

23. Plaintiff is annoyed and feels harassed by Defendant's calls.

**COUNT I  
DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT**

24. Defendant's actions alleged *supra* constitute numerous violations of the TCPA, entitling Plaintiff to an award of \$500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B).

25. Defendant's actions alleged *supra* constitute numerous and multiple knowing and/or willful violations of the TCPA, entitling Plaintiff to an award of \$1500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

**WHEREFORE**, Plaintiff respectfully requests judgment be entered against Defendant for the following:

26. Statutory damages of \$500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B),

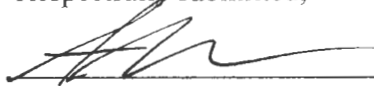
27. Statutory damages of \$1500.00 for each and every knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(b) and 47 U.S.C. § (b)(3)(C),

28. All court costs, witness fees and other fees incurred,

29. Any other relief that this Honorable Court deems appropriate.

Dated: July 2, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Adam T. Hill', is written over a horizontal line.

Adam T. Hill  
KROHN & MOSS, LTD.  
10 N. Dearborn St., 3rd Fl.  
Chicago, Illinois 60602  
Telephone: 312-578-9428  
Telefax: 866-861-1390  
ahill@consumerlawcenter.com  
Attorneys for Plaintiff